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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,718	02/05/2004	Jeffrey A. Schuster	AERX-062DIV	8297
24353	7590	10/03/2005	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,718	SCHUSTER ET AL.	
	Examiner	Art Unit	
	AARON J. LEWIS	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 48-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 49-56 is/are allowed.
- 6) ☒ Claim(s) 6-11 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks et al.('874).

As to claim 6, Brooks et al. disclose a method of improving the efficiency of a device for dissipating power to store heat in a heating element (18), storing heat in the heating element, and then releasing the stored heat to warm air passing thereby, the warmed air being provided to a pharmaceutically active formulation (col.8, lines 4-22), said method comprising the steps of: modifying the device (col.8, lines 23-30 and col.11, lines 6-19) to increase the thermal time constant of the heating element in still air.

As to claim 7, Brooks et al. disclose said modifying to increase the thermal time constant in still air comprises coating the thermal element with a low emissivity material (i.e. tubes 36 and 66 being insulative and heat resistant are inherently low emissive materials).

As to claim 8, Brooks et al. disclose said modifying comprises providing a shield (36,66) around the heating element (18).

As to claim 9, Brooks et al. disclose providing at least one shield closing element (22 of fig.2 and 55,56 of fig.1) in an open end of said shield.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al.('874) in view of Levine ('411).

The difference between Brooks et al. and claim 10 is modifying the device to decrease the thermal time constant of the device in moving air.

Levine, in an inhaler having a heater for adding heat to a pharmaceutically active formulation, teaches modifying the device to decrease the thermal time constant of the device in moving air by configuring the heater (124) as a braided coil with each adjacent coil having a different diameter thereby exposing substantially the entire surface area of the coil to the flow of aerosolized pharmaceutically active formulation (col.6, line 61- col.7, line 8).

It would have been obvious to modify the heater of Brooks et al. to configure it as a braided coil with each coil having a different diameter because it would have exposed substantially the entire surface area of the coil to the flow of aerosolized pharmaceutically active formulation as taught by Levine.

As to claim 11, Brooks et al. as discussed above with respect to claim 6 discloses modifying the device to increase the thermal time constant of the device in still air by adding a heat resistant insulative shield (36,66) which is implicitly low emissive around

the heater (18); and Brooks et al. as modified by Levine as discussed above with respect to claim 10 teach modifying the device to decrease the thermal time constant of the device in moving air by configuring the heater as a series of braided coils with adjacent coils having different diameters for the purpose of exposing substantially the entire surface area of the coil to the flow of aerosolized pharmaceutically active formulation thereby releasing more heat per unit time to the aerosolized pharmaceutically active formulation.

5. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al.('874).

Brooks et al. disclose the material of the shield to be a variety of materials including a metal material (e.g. aluminum) or the like (col.11, lines 9-13). It would have been obvious to modify the shield material to be of any material that would provide the recited function of insulating the heater including the use of the metal gold as an obvious matter of design choice with no new or unobvious results accruing. That is, gold which is a metal material would have been an advantageous substitute because of its known non-reactive characteristics including its resistance to oxidation as well as its known low emissivity and any material used in the shield of Brooks et al. would have resistive to chemically reacting with the medicament being vaporized.

Allowable Subject Matter

6. Claims 1-5,49-56 are allowed.

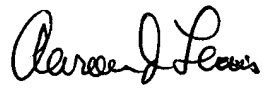
Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant heaters and inhalers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
October 01, 2005